

Call for evidence:

Age Appropriate Design Code

Start date: 27 June 2018
End date: 19 September 2018



Introduction

The Information Commissioner (the Commissioner) is calling for evidence and views on the Age Appropriate Design Code (the Code).

The Code is a requirement of the Data Protection Act 2018 (the Act). The Act supports and supplements the implementation of the EU General Data Protection Regulation (the GDPR).

The Code will provide guidance on the design standards that the Commissioner will expect providers of online 'Information Society Services' (ISS), which process personal data and are likely to be accessed by children, to meet. Once it has been published, the Commissioner will be required to take account of any provisions of the Code she considers to be relevant when exercising her regulatory functions. The courts and tribunals will also be required to take account of any provisions they consider to be relevant in proceedings brought before them. The Code may be submitted as evidence in court proceedings.

Further guidance on how the GDPR applies to children's personal data can be found in our guidance [Children and the GDPR](#). It will be useful to read this before responding to the call for evidence, to understand what is already required by the GDPR and what the ICO currently recommends as best practice. In drafting the Code the ICO may consider suggestions that reinforce the specific requirements of the GDPR, or its overarching requirement that children merit special protection, but will disregard any suggestions that fall below this standard.

The Commissioner will be responsible for drafting the Code. The Act provides that the Commissioner must consult with relevant stakeholders when preparing the Code, and submit it to the Secretary of State for Parliamentary approval within 18 months of 25 May 2018. She will publish the Code once it has been approved by Parliament.

This call for evidence is the first stage of the consultation process. The Commissioner seeks evidence and views on the development stages of childhood and age-appropriate design standards for ISS. The Commissioner is particularly interested in evidence based submissions provided by: bodies representing the views of children or parents; child development experts; providers of online services likely to be accessed by children, and trade associations representing such providers. She appreciates that different stakeholders will have different and particular areas of expertise. The Commissioner welcomes responses that are limited to specific areas of interest or expertise and only address questions within these areas, as well as those that address every question

asked. She is not seeking submissions from individual children or parents in this call for evidence as she intends to engage with these stakeholder groups via other dedicated and specifically tailored means.

The Commissioner will use the evidence gathered to inform further work in developing the content of the Code.

The scope of the Code

The Act affords the Commissioner discretion to set such standards of age appropriate design as she considers to be desirable, having regard to the best interests of children, and to provide such guidance as she considers appropriate.

In exercising this discretion the Act requires the Commissioner to have regard to the fact that children have different needs at different ages, and to the United Kingdom's obligations under the United Nations Convention on the Rights of the Child.

During Parliamentary debate the Government committed to supporting the Commissioner in her development of the Code by providing her with a list of 'minimum standards to be taken into account when designing it.' The Commissioner will have regard to this list both in this call for evidence, and when exercising her discretion to develop such standards as she considers to be desirable

In developing the Code the Commissioner will also take into account that the scope and purpose of the Act, and her role in this respect, is limited to making provision for the processing of personal data.

Responses to this call for evidence must be submitted by 19 September 2018. You can submit your response in one of the following ways:

Online

Download this document and email to:

childrenandtheGDPR@ICO.org.uk

Print off this document and post to:

Age Appropriate Design Code call for evidence
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Cheshire SK9 5AF

If you would like further information on the call for evidence please telephone 0303 123 1113 and ask to speak to the Engagement Department about the Age Appropriate Design Code or email childrenandtheGDPR@ICO.org.uk

Privacy statement

For this call for evidence we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Section 1: Your views and evidence

Please provide us with your views and evidence in the following areas:

Development needs of children at different ages

The Act requires the Commissioner to take account of the development needs of children at different ages when drafting the Code.

The Commissioner proposes to use their age ranges set out in the report Digital Childhood – addressing childhood development milestones in the Digital Environment as a starting point in this respect. This report draws upon a number of sources including findings of the United Kingdom Council for Child Internet Safety (UKCCIS) Evidence Group in its literature review of Children’s online activities risks and safety.

The proposed age ranges are as follows:

3-5
6-9
10-12
13-15
16-17

Q1. In terms of setting design standards for the processing of children’s personal data by providers of ISS (online services), how appropriate you consider the above age brackets would be (delete as appropriate):

Not at all appropriate
Not really appropriate
Quite appropriate
Very appropriate

Q1A. Please provide any views or evidence on how appropriate you consider the above age brackets would be in setting design standards for the processing of children’s personal data by providers of ISS (online services),

We suggest ICO obtain legal advice concerning the developmental stages of children and their understanding in order that the ICO protocol can be aligned with present legislation and case law. Additionally that the ICO obtain expert evidence on child development. We draw attention to the wording of Section 1(3)(a) of The Children Act 1989

which reads that “a court shall have regard to the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)”. We suggest that similar wording should be included in the ICO design code.

Q2. Please provide any views or evidence you have on children’s development needs, in an online context in each or any of the above age brackets.

We suggest you obtain legal advice concerning the “Gillick principle” as it applies to children and young persons being able to give a view about their own circumstances regardless of the view of whoever has parental responsibility for them.

The United Nations Convention on the Rights of the Child

The Data Protection Act 2018 requires the Commissioner to take account of the UK’s obligations under the UN Convention on the Rights of the Child when drafting the Code.

Q3. Please provide any views or evidence you have on how the Convention might apply in the context of setting design standards for the processing of children’s personal data by providers of ISS (online services)

We suggest that the ICO Design Code be fully compatible with the United Nations Convention on the rights of the child. In addition, we suggest that the definition of “significant harm” as defined in The Children Act 1989 and developed by case law be borne in mind when developing the code.

Aspects of design

The Government has provided the Commissioner with a list of areas which it proposes she should take into account when drafting the Code.

These are as follows:

- default privacy settings,
- data minimisation standards,
- the presentation and language of terms and conditions and privacy notices,
- uses of geolocation technology,
- automated and semi-automated profiling,

- transparency of paid-for activity such as product placement and marketing,
- the sharing and resale of data,
- the strategies used to encourage extended user engagement,
- user reporting and resolution processes and systems,
- the ability to understand and activate a child's right to erasure, rectification and restriction,
- the ability to access advice from independent, specialist advocates on all data rights, and
- any other aspect of design that the commissioner considers relevant.

Q4. Please provide any views or evidence you think the Commissioner should take into account when explaining the meaning and coverage of these terms in the code.

We suggest that it is vital to ensure that default privacy settings are set to 'totally private' and that only a person with PR or a young person of sufficient 'age and understanding' (see the earlier reference to the Children Act 1989) be able to change that default setting. Similar considerations apply to a 'child's right to erasure, rectification and restriction' of data.

We suggest that children and young people should have access to a child centred independent, specialist advocate on data rights.

We suggest that there should be no resale of data concerning children and young people.

We suggest that the sharing of data should only be permitted if the welfare of a child so requires (- but who decides what is in the interests of the welfare of the child ? - we suggest that this is a fundamental question that requires fuller consideration).

Q5. Please provide any views or evidence you have on the following:

Q5A. about the opportunities and challenges you think might arise in setting design standards for the processing of children's personal data by providers of ISS (online services), in each or any of the above areas.

We believe that Nagalro can best assist the ICO when we see the intended wording of the ICO Design Code. Then we can

make more detailed and relevant comment. To enable that we invite the ICO to share with us the initial draft of the Design Code when it is available.

Q5B. about how the ICO, working with relevant stakeholders, might use the opportunities presented and positively address any challenges you have identified.

We invite the ICO to contact us for further discussion about the many complex issues relating to this question. We suggest the ICO have regard to the many pertinent issues raised in the House of Lords during the debate on 11 December 2017.

Q5C. about what design standards might be appropriate (ie where the bar should be set) in each or any of the above areas and for each or any of the proposed age brackets.

We invite the ICO to contact us for further discussion about the many complex issues relating to this question. At present the Court adjudicates as to the best interests of an individual child in legal proceedings relating to a child's welfare / best interests. This is following advocacy from the parties to the proceedings and the advice of the Children's Guardian. We suggest that a similar thorough process is considered by the ICO to avoid the possibility of anyone trying to 'get around' issues that may be fundamental in order to fully protect particularly vulnerable children aged 13 and above which we understand at present is the age at which the ICO believe the child has a right to form their own opinion on the matters relevant to the code.

Q5D. examples of ISS design you consider to be good practice.

In our view it would be appropriate that the ISS designs are compatible with children's legislation and case law.

Q5E. about any additional areas, not included in the list above that you think should be the subject of a design standard.

We look forward to being invited by the ICO to comment in fuller detail following the production of the first draft of the Age Appropriate Design Code. .

Q6. If you would be interested in contributing to future solutions focussed work in developing the content of the code please provide the following information. The Commissioner is particularly interested in hearing from bodies representing the views of children or parents, child development experts and trade associations representing providers of online services likely to be accessed by children, in this respect.

Name **NAGALRO, the professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers**

Email **nagalro@nagalro.com**

Brief summary of what you think you could offer

Nagalro welcomes the opportunity to discuss all the questions in this survey in further detail at a face to face meeting, should the ICO consider this appropriate. As the professional association for Children's Guardians, Family Court Advisers and ISWs, our members have a wealth of training and professional experience of working with children and representing their view in court proceedings relating to their welfare.

Further views and evidence

Q7. Please provide any other views or evidence you have that you consider to be relevant to this call for evidence.

Nagalro aims to promote and enhance the quality of practice of those concerned with the independent representation of children's interests before the courts, throughout England and Wales. Many of our members are Children's guardians who are appointed in public law proceedings in the family courts i.e. where Local Authority Children's Services take court action to protect children whom they believe are suffering significant harm within their families, - physical, sexual or emotional abuse. The role developed to give children an independent voice and access to independent representation after the tragic death of Maria Colwell, a seven year old girl whose voice was not heard when the court returned her to mother and step father who murdered her. The Guardian's independent investigation and assessment of the child's situation ensures that his or hers rights and welfare are protected by the court. It is the independence of the Guardian's view that provides the critical safeguard for the child. Guardians are also appointed in adoption proceedings, emergency protection orders, and applications for secure accommodation and in private law proceedings where a child's welfare requires independent representation.

Nagalro, PO Box 264, Esher, Surrey, KT10 0WA
01372 818504
nagalro@nagalro.com

Section 2: About you

Are you:

A body representing the views or interests of children? Please specify:	<input checked="" type="checkbox"/>
A body representing the views or interests of parents? Please specify:	<input type="checkbox"/>
A child development expert? Please specify:	<input type="checkbox"/>
A provider of ISS likely to be accessed by children? Please specify:	<input type="checkbox"/>
A trade association representing ISS providers? Please specify:	<input type="checkbox"/>
An ICO employee?	<input type="checkbox"/>
Other? Please specify:	<input type="checkbox"/>

**Thank you for responding to this call for evidence.
We value your input.**